APPENDIX A

NEW MEXICO STATUTES ANNOTATED, 1978

INCOME TAX GENERAL PROVISIONS

7-2-1. Short title.

This act may be cited as the "Income Tax Act."

7-2-2. Definitions.

For the purpose of the Income Tax Act, and unless the context requires otherwise:

* * *

S. "base income" means that part of the taxpayer's income generally defined as federal taxable income and upon which the federal income tax is calculated;

T. "net income" means base income adjusted to exclude:

(1) amounts that have been taxed as income to another member of an affiliated group of corporations under the Banking and Financial Corporations Tax Act [7-6-1 to 7-6-9 NMSA 1978]; and

(2) amounts that the state is prohibited from taxing because of the laws or constitution of this state or the United States; and

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7-2-3. Imposition and levy of tax.

A tax is hereby imposed at the rates specified in Sections 5 and 6 upon the net income of every resident individual and every domestic corporation and upon the net income of every foreign corporation and every nonresident individual employed or engaged in the transaction of business in, into or from this state, or deriving any income from any property or employment within this state.

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7-2-8. Corporate income tax rates.

The tax imposed on corporations by Section 7-2-3 NMSA 1978 shall be at the rate of five percent.

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7-2-11. Income allocation.

At the election of any taxpayer, net income may be, and during the first taxable year in which an individual incurs tax liability as a resident, shall be, prior to the application of the tax rates provided in Sections 7-2-7 and 7-2-8 NMSA 1978, apportioned and allocated as follows:

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B. except as provided otherwise in Subsection A of this section, income other than compensation shall be allocated and apportioned as provided in the Uniform Division of Income for Tax Purposes Act [7-4-1 to 7-4-21 NMSA 1978];

* * *

DIVISION OF INCOME FOR TAX PURPOSES

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7-4-2. Definitions.

As used in the Uniform Division of Income for Tax Purposes Act [7-4-1 to 7-4-21 NMSA 1978]:

A. "business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations;

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D. "nonbusiness income" means all income other than business income;

E. "sales" means all gross receipts of the taxpayer not allocated under Sections 5 through 9 [7-4-5 to 7-4-9 NMSA 1978] of the Uniform Division of Income for Tax Purposes Act; and

* * *

7-4-3. Allocation and apportionment of income in general.

Any taxpayer having income which is taxable both within and without this state, other than the rendering of purely personal services by an individual, and making the election to do so as provided in the Income Tax Act [7-2-1 to 7-2-22 NMSA 1978], shall allocate and apportion his net income as provided in the Uniform Division of Income for Tax Purposes Act [7-4-1 to 7-4-21 NMSA 1978].

7-4-4. When taxable in another state.

For purposes of allocation and apportionment of income under the Uniform Division of Income for Tax Purposes Act [7-4-1 to 7-4-21 NMSA 1978], a taxpayer is taxable in another state if:

A. in that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

B. that state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether the state does or does not.

7-4-5. Allocation of certain nonbusiness income.

Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in Sections 6 through 9 [7-4-6 to 7-4-9 NMSA 1978] of the Uniform Division of Income for Tax Purposes Act.

7-4-6. Allocation of rents and royalties.

A. Net rents and royalties from real property located in this state are allocable to this state.

B. Net rents and royalties from tangible personal property are allocable to this state:

(1) if and to the extent that the property is utilized in this state; or

(2) in their entirety if the taxpayer's commercial domicile

is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

C. The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

7-4-7. Allocation of capital gains and losses.

A. Capital gains and losses from sales of real property located in this state are allocable to this state.

B. Capital gains and losses from sales of tangible personal property are allocable to this state if:

(1) the property had a situs in this state at the time of the sale; or

(2) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

C. Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

7-4-8. Allocation of interest and dividends.

Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

7-4-9. Allocation of patent and copyright royalties.

A. Patent and copyright royalties are allocable to this state:

(1) if and to the extent that the patent or copyright is utilized by the payer in this state; or

(2) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

B. A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

C. A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

7-4-10. Apportionment of business income.

All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

7-4-11. Property factor for apportionment of business income.

The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

7-4-12. Valuation of property for inclusion in property factor.

Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rate is the annual rental paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

7-4-13. Determination of average value of property for inclusion in property factor.

The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the commissioner of revenue [director of the revenue division of the taxation and revenue department] may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

7-4-14. Payroll factor for apportionment of business income.

The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the tax period.

7-4-15. Determination of compensation for inclusion in payroll factor.

Compensation is paid in this state if:

A. the individual's service is performed entirely within the state; or

B. the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

C. some of the service is performed in the state and:

(1) the base of operations, or, if there is no base of operations, the place from which the service is directed or controlled is in the state; or

(2) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

7-4-16. Sales factor for apportionment of business income.

The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

7-4-17. Determination of sales in this state of tangible personal property for inclusion in sales factor.

Sales of tangible personal property are in this state if:

A. the property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

B. the property is shipped from an office, store, warehouse, factory or other place of storage in this state and:

(1) the purchaser is the United States government; or

(2) the taxpayer is not taxable in the state of the purchaser.

7-4-18. Determination of sales in this state of other than tangible personal property for inclusion in sales factor.

Sales, other than sales of tangible personal property, are in this state if:

A. the income-producing activity is performed in this state; or

B. the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

7-4-19. Equitable adjustment of standard allocation or apportionment.

If the allocation and apportionment provisions of the Uniform Division of Income for Tax Purposes Act [7-4-1 to 7-4-21 NMSA 1978] do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for, or the director of the revenue division of the taxation and revenue department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

A. separate accounting;

B. the exclusion of any one or more of the factors;

C. the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

D. the employment of any other method to effectuate an

equitable allocation and apportionment of the taxpayer's income.

7-4-20. Agreements authorized in unusual cases.

In circumstances within the scope of Section 19 [7-4-19 NMSA 1978] of the Uniform Division of Income for Tax Purposes Act and in other circumstances where the revenues of the state would not be adversely affected, the commissioner [director of the revenue division of the taxation and revenue department] is authorized to enter into an agreement in writing with any person with respect to apportionment and allocation of his income. Except upon a showing of fraud or misrepresentation of a material fact, or a change in the statutory law, such agreement shall be conclusive. Any agreement, however, may be terminated by either party by written notice thereof to the other party at least 90 days before the beginning of the taxable year to which the termination shall apply.

7-4-21. Construction of act.

The Uniform Division of Income for Tax Purposes Act [7-4-1 to 7-4-21 NMSA 1978] shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

MULTISTATE TAX COMPACT

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7-5-2. Election of alternative tax.

Any person:

A. who is required by the Income Tax Act to file a return; and

B. whose only activities in New Mexico consist of making sales; and

C. who does not own or rent real estate within the state of New Mexico; and

D. whose annual gross sales in or into New Mexico amount to not more than one hundred thousand dollars ($100,000), may elect to pay a tax of three-fourths of one percent of his annual gross receipts derived from sales in or into New Mexico in lieu of paying an income tax.

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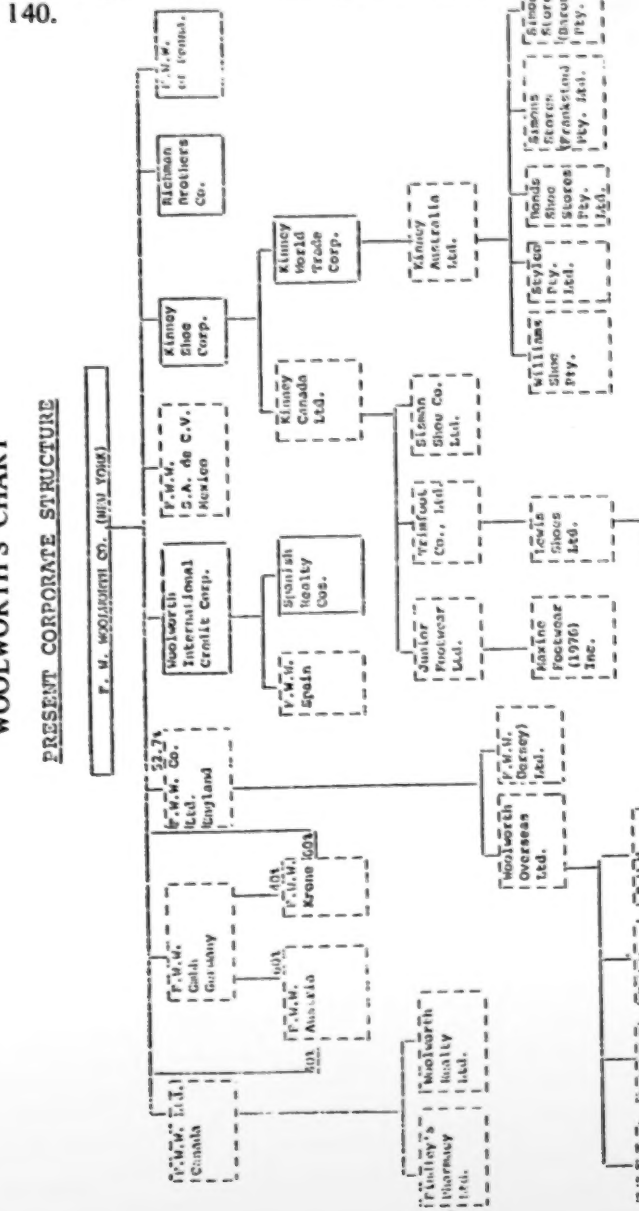
APPENDIX B

Submitted as Taxpayer's Exhibit A—Record, p. 140.



CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of January, 1982, I, Sarah E. Bennett, a member of the bar of the Supreme Court, caused to be mailed, postage prepaid, three copies of the foregoing Brief of Appellee to George W. Beatty and William L. Goldman, Counsel for the Appellant, at 1200 - 18th Street, N.W., Washington, D.C. 20036 and to Michael D. Bray, at 919 Third Avenue, New York, New York 10022. I further certify that all parties required to be served have been served.

SARAH E. BENNETT
Special Assistant Attorney General